

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY, et al.,

Plaintiffs,

v.

MAGNETEK, INC., et al.,

Defendants.

No. 4:23-CV-00204-HEA

Affidavit of Robert G. Kaley, II

I, Robert G. Kaley, II Ph.D., am of sound mind and do hereby declare:

1. I hold a Ph.D. in analytical chemistry from the University of Illinois. I was employed by the former Monsanto Company, n/k/a Pharmacia LLC (hereafter “Old Monsanto”) from 1973 until September 1997. For approximately 15 years, I served as Director of Environmental Affairs for Old Monsanto focusing on product stewardship, regulatory affairs, and technical litigation support for legacy chemicals, including for polychlorinated biphenyls (PCBs). Prior to that, I spent approximately ten years with Old Monsanto working on the analysis of environmental chemicals by gas chromatography/mass spectrometry.

2. From the time of the “spin-off” of certain past and present chemical businesses of Old Monsanto effective September 1, 1997, I was employed by Solutia, Inc. until the time of my retirement from Solutia in August 2003. Since my retirement from Solutia, I have consulted on behalf of Old Monsanto and Solutia, including at the request of the current Monsanto Company.

3. During my employment with Old Monsanto and thereafter, I became familiar with Old Monsanto’s business records relating to PCBs: (a) made and created by Old Monsanto in the ordinary course of its business; and (b) obtained from related parties and third parties as those

records are kept by the current Monsanto Company in its files in the ordinary course of its business in relation to PCBs.

4. The attached Exhibits A through U are true and accurate copies made or received at or near the date the documents bear, have been kept in the course of Old Monsanto's regularly conducted activity, and were made or received as a regular practice in the course of Old Monsanto's regularly conducted activity. Moreover, Exhibits A through U were made by, or from information transmitted by, a person with knowledge of the matters contained therein.

- a. Attached as Exhibit A are true and accurate copies of an internal Old Monsanto memorandum by Paul Benignus dated January 14, 1972 regarding P.R. Mallory's upcoming visit to Old Monsanto's headquarters in St. Louis, Missouri; and a document with handwritten notes regarding communications with P.R. Mallory representatives.
- b. Attached as Exhibit B are true and accurate copies of an internal Old Monsanto memorandum dated February 1, 1972 regarding negotiations of the Special Undertaking Contract with P.R. Mallory and ordering Aroclor products; a February 3, 1972 telex from P.R. Mallory to Old Monsanto about the Special Undertaking Contract; a letter dated February 4, 1972 from P.R. Mallory to Old Monsanto stating it has enclosed executed copies of the Special Undertaking Contract (without enclosures); and a February 29, 1972 letter from Old Monsanto to P.R. Mallory returning a copy of the signed Special Undertaking Contract (without enclosures).
- c. Attached as Exhibit C are true and accurate copies of Old Monsanto sales reports showing sales of Aroclor products to P.R. Mallory from 1972 to 1977.

- d. Attached as Exhibit D is a true and accurate copy of a Purchase Order from Mallory Capacitor Company, a division of P.R. Mallory, dated May 24, 1977, for the purchase of Aroclor products, that was sent to Old Monsanto in St. Louis, Missouri.
- e. Attached as Exhibit E are true and accurate copies of 29 Old Monsanto invoices to P.R. Mallory for the purchase of Aroclor products between June 11, 1973 to July 22, 1977.
- f. Attached as Exhibit F are true and accurate copies of a call report documenting calls between Old Monsanto and P.R. Mallory representatives on May 22, 1972 regarding pricing of Aroclors; a February 22, 1973 letter from an Old Monsanto representative to a P.R. Mallory representative confirming receipt of a purchase order of Aroclor products; a June 14, 1974 call report regarding a call between P.R. Mallory and Old Monsanto employees regarding continued use of PCBs; a September 10, 1974 call report documenting discussions between Old Monsanto and P.R. Mallory representatives regarding, among other things, the International dielectric symposium; a summary of an October 29, 1974 visit by P.R. Mallory representatives to Old Monsanto in St. Louis, Missouri; a February 20, 1976 call report documenting a discussion about Mallory's purchases of Aroclor products from Old Monsanto; a March 16, 1976 letter from a P.R. Mallory representative to an Old Monsanto representative in St. Louis; a June 9, 1976 letter from a P.R. Mallory representative to an Old Monsanto representative in St. Louis; a July 9, 1976 letter from a P.R. Mallory representative to an Old Monsanto representative in St. Louis; an August 27, 1976 call report regarding a P.R. Mallory's representatives' request to visit Old Monsanto in St. Louis to discuss PCBs; a

February 21, 1977 letter from Old Monsanto to P.R. Mallory regarding Mallory's final Aroclor shipment; and a December 28, 1977 letter from P.R. Mallory to Old Monsanto regarding Mallory's transfer of a tank car of Aroclor 1016 to Aerovox.

- g. Attached as Exhibit G are true and accurate copies five Old Monsanto invoices to P.R. Mallory for the purchase of Aroclor products between March 1, 1972 to April 25, 1973, each with terms stating the contracts shall be construed according to Missouri law.
- h. Attached as Exhibit H are true and accurate copies of documents regarding P.R. Mallory representatives' visits to Old Monsanto in St. Louis, Missouri, including: a visit by Arnold S. Doty of Mallory on February 28, 1974; a visit by Mark van Buskirk, Lyle Shoot, and Dr. Donald Wilson for Old Monsanto's Dielectrics Symposium on September 23, 1974; an October 29, 1974 visit by Mark van Buskirk and Windsor Waits of P.R. Mallory; a visit by Mallory chemist George Smith on November 4, 1974; a March 31, 1976 visit by five Mallory employees, including Bud Dipple, General Manager and Ron Warwick, President, of Mallory's Capacitor Division; and a September 14, 1976 visit by Roy Davidson of Mallory.
- i. Attached as Exhibit I are true and accurate copies of handwritten notes documenting phone calls with CDE representatives at various points in January of 1972 regarding the Special Undertaking and a January 26, 1972 letter from CDE's parent company to Old Monsanto "returning" the Special Undertaking Contract (without enclosures).
- j. Attached as Exhibit J are true and accurate copies of Old Monsanto sales records showing sales of Aroclor products to CDE from 1972 to 1977.

- k. Attached as Exhibit K are true and accurate copies of purchase orders of Aroclor products from CDE, dated June 23, 1976, October 21, 1976, December 27, 1976, January 24, 1977, April 29, 1977, and July 28, 1977 sent to Old Monsanto in St. Louis, Missouri.
- l. Attached as Exhibit L are true and accurate copies of 66 Old Monsanto invoices to CDE for the purchase of Aroclor products between February 2, 1972 to October 14, 1977.
- m. Attached as Exhibit M are true and accurate copies of an Old Monsanto internal call report dated February 25, 1976 by David Wood, an Old Monsanto employee based in St. Louis, summarizing recent discussions about PCB sales with customers including CDE; an Old Monsanto internal call report dated October 13, 1976 by J.A. Alley, an Old Monsanto employee based in St. Louis, summarizing a recent discussion with CDE about its PCB purchases; a letter dated February 10, 1977 from J.A. Alley, an Old Monsanto employee based in St. Louis, to Charles Rebello, a Senior Buyer at CDE, referencing phone conversations regarding purchases of Aroclor 1016; a letter dated February 21, 1977 to Charles Rebello, Senior Buyer at CDE, from Robert Potter, an Old Monsanto employee based in St. Louis, regarding the terms of CDE's final PCB purchase; and another copy of the same February 21, 1977 letter, countersigned by Charles Rebello.
- n. Attached as Exhibit N are true and accurate copies of letters from Monsanto regarding CDE's requirement to carry active insurance policies in order to receive PCB shipments, to Duane Blough of CDE, dated May 30, 1975; Duane Blough of

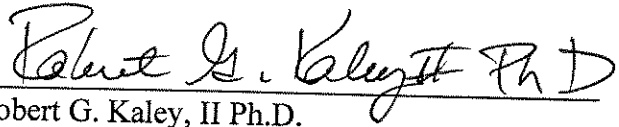
CDE, dated February 27, 1976; Philip Murray of CDE, dated March 8, 1977; and 13 Certificates of Insurance dated April 21, 1972 until June 28, 1977.

- o. Attached as Exhibit O are true and accurate copies of a call report by Paul Benignus of Old Monsanto regarding an August 3, 1972 visit by three CDE executives to Old Monsanto in St. Louis, Missouri; a September 12, 1974 letter from Old Monsanto to Mr. G. B. Todd of CDE, based in St. Louis, confirming his planned attendance at Old Monsanto's Dielectrics Symposium; a list of planned symposium attendees as of September 11, 1974, including "Todd (St. Louis)" of CDE; and a guest list confirming Jerry Todd of CDE's attendance at a dinner at the symposium on September 23, 1974.
- p. Attached as Exhibit P are true and accurate copies of communications between Aerovox and Old Monsanto regarding the negotiation of the Special Undertaking, including: a January 10, 1972 letter from Old Monsanto to Aerovox requesting for additional information regarding Aerovox's business; a January 24, 1972 letter from Old Monsanto to Aerovox regarding Aerovox's insurance status; a January 28, 1972 letter from Aerovox to Old Monsanto regarding an Aroclor purchase order and a draft of a proposed indemnity agreement; said draft of the Special Undertaking, also dated January 28, 1972; and a telex from Aerovox to Old Monsanto dated February 3, 1972.
- q. Attached as Exhibit Q are true and accurate copies of a letter dated February 7, 1972 from T. Kenwood Mullare of Aerovox to John Stapleton of Old Monsanto (without enclosures).

- r. Attached as Exhibit R are true and accurate copies of a letter from Phocion S. Park, Senior Attorney at Old Monsanto, to T. Kenwood Mullare, Jr., Corporate Counsel for Aerovox dated March 7, 1972 enclosing the a "Special Undertaking By Purchasers of Polychlorinated Biphenyls;" and a letter from Kenwood Mullare of Aerovox, to Phocion Park of Old Monsanto, dated March 22, 1972 (without enclosures).
- s. Attached as Exhibit S are true and accurate copies of Old Monsanto sales reports showing sales of Aroclor products to Aerovox from 1972 to 1977.
- t. Attached as Exhibit T are true and accurate copies of six Old Monsanto invoices to Aerovox for the purchase of Aroclor products between March 16, 1972 to December 5, 1972.
- u. Attached as Exhibit U are true and accurate copies of documents showing proof of Aerovox's insurance, sent to Old Monsanto from American Home Assurance Company, dated March 24, 1972; Kemper Insurance, dated March 31, 1972; and Fairfield & Ellis Inc., dated April 13, 1972.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 8, 2023.


Robert G. Kaley, II Ph.D.

STATE OF MISSOURI)
) SS
COUNTY OF SAINT LOUIS)

On the 8th day of June, 2023, before me personally appeared Robert G. Kaley, II Ph.D. to me known to be the person described in and who executed the foregoing Affidavit and who did state that the averments contained therein are true and correct to the best of his knowledge and that he executed the Affidavit of his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.

My term expires: 9-23-2024


Notary Public

